



**Report to the
Colorado General Assembly**

**Sales and Use Tax
Simplification Task Force**

Prepared by

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Sales and Use Tax Simplification Task Force

Members of the Task Force

Representative Tracy Kraft-Tharp, Chair
Senator Tim Neville, Vice-Chair

Senator Cheri Jahn
Bryan Archer
Kristin Baumgartner
Steve Ellington
Bruce Nelson
Neil Pomerantz
Judith Vorndran

Representative Lang Sias
Paul Archer
Dianne Criswell
Tracy Hines
Heather Pezzella
Brendon Reese

Legislative Council Staff

Luisa Altmann, Research Analyst
Larson Silbaugh, Senior Economist
Greg Sobetski, Senior Economist

Office of Legislative Legal Services

Esther van Mourik, Senior Attorney
Ashley Athey, Senior Legislative Editor

November 1, 2017

Table of Contents

Task Force Charge and Membership	1
Task Force Activities	3
Overview of the current Colorado sales and use tax system	
Overview of other states' experiences and national simplification efforts	
Federal legislation	
Sales and use tax software providers	
Update on the Colorado Municipal League's standard definitions project	
Public comment	
Summary of Recommendation	11
Bill A — DOR Issue Sales Tax Request for Information	
Resource Materials	13
Meeting dates and topics discussed	
Appendix	15
Letters sent to task force	
Standard definition ordinance	

This report is also available on line at:

<http://leg.colorado.gov/committees/sales-and-use-tax-simplification-task-force/2017-regular-session>

Task Force Charge and Membership

The Sales and Use Tax Simplification Task Force (task force) was created pursuant to House Bill 17-1216. According to the bill, the task force is charged with studying the following policy issues:

- the necessary components of a simplified sales and use tax system for both state and local governments, including home rule municipalities and counties;
- opportunities and challenges within existing fiscal frameworks to adopt innovative revenue-neutral solutions that do not require constitutional amendments or voter approval;
- the feasibility of having a third-party entity responsible for state or local sales and use tax administration, return processing, and audits;
- the feasibility of making audits of retailers more uniform for all state and local taxing jurisdictions in the state;
- the feasibility of utilizing certified software for sales and use tax administration and collection of state and local sales and use tax; and
- the feasibility of utilizing a single sales and use tax return for state and local taxing jurisdictions.

The bill also requires the task force to submit a report to Legislative Council by November 1 of each year, which may or may not include recommendations for legislation.

In total, there are fifteen members on the task force:

- Representative Tracy Kraft-Tharp, Chair, appointed by the Speaker of the House of Representatives;
- Senator Tim Neville, Vice-Chair, appointed by the President of the Senate;
- Senator Cheri Jahn, appointed by the Minority Leader of the Senate;
- Representative Lang Sias, appointed by the Minority Leader of the House of Representatives;
- Bryan Archer, Director of Finance, City of Arvada, appointed by the Colorado Municipal League, representing the large population category;
- Paul Archer, Owner, Automated Business Products of Colorado, appointed by the Governor as a member of a statewide association of small businesses that is addressing the simplification of sales and use tax collection;
- Kristin Baumgartner, Assistant City Manager and Finance Director, City of Lone Tree, appointed by the Colorado Municipal League, representing the medium population category;
- Dianne Criswell, Legislative and Policy Advocate, Colorado Municipal League;
- Tracy Hines, Sales Tax Administrator, Larimer County, representing Colorado Counties, Inc.;
- Steve Ellington, Treasurer, City and County of Denver, appointed by the Colorado Municipal League, representing the largest population category;
- Bruce Nelson, Director of State and Local Tax, EKS&H, appointed by the Governor as a member of the statewide chamber of commerce;
- Heather Pezzella, Revenue Services Administrator, Town of Breckenridge, appointed by the Colorado Municipal League, representing the small population category;

- Neil Pomerantz, Partner, Silverstein & Pomerantz, appointed by the Governor as a state and local sales tax law practitioner;
- Brendon Reese, Deputy Director of Taxation Policy and Legal Analysis, Colorado Department of Revenue; and
- Judith Vorndran, Partner, TaxOps, appointed by the Governor as someone with state and local sales and use tax accounting experience.

Task Force Activities

The task force held four meetings during the 2017 interim. Briefings and presentations were made by the Office of Legislative Legal Services staff, the Colorado Department of Revenue, the Colorado Municipal League, Colorado Counties, Inc., members of the business community, the Special District Association, the Colorado Tax Auditors Coalition, the Office of the State Auditor, the Council on State Taxation, the Tax Foundation, Streamlined Sales Tax Governing Board, Inc., the Statewide Internet Portal Authority, various software providers, and members of the public on a wide range of subjects, including:

- the current Colorado sales and use tax system;
- other states' efforts to simplify their sales and use tax system;
- pending federal legislation impacting sales and use tax simplification;
- work being done by various software providers; and
- updates on the Colorado Municipal League's standardized definitions project.

The following sections discuss the task force's activities during the 2017 interim.

Overview of the Current Colorado Sales and Use Tax System

Colorado's system of state and local sales and use taxes is one of the most complicated in the country. The task force received presentations from representatives of the state Department of Revenue (DOR), county governments, home rule and statutory municipal governments, special districts, businesses with vendor licenses, and sales tax preparation firms. These presentations testified to the complexity of the current system, the challenges associated with sales and use tax simplification, and the need to balance home rule authority for collecting taxes with the compliance challenges faced by businesses.

State tax. Colorado is one of 45 states to assess a state sales tax.¹ Among states with a sales tax, Colorado's state sales tax is assessed at the lowest rate, 2.9 percent. The tax base includes all sales of tangible personal property except those that are specifically exempted, and exempts all sales of services except those that are specifically subject to the tax.² The state use tax is assessed when sales tax was due but was not collected, such as cases where a good was purchased from an out-of-state seller. In these cases, the purchaser is required to remit use tax directly to the state. The state sales and use tax is administered by the DOR.

County taxes. With voter approval, counties are authorized to assess a sales tax, use tax, or both.³ County sales taxes are imposed on the same collection of goods and services as the state sales tax, except that certain state sales tax exemptions are not by default extended to counties.⁴ In these cases, boards of county commissioners may adopt an ordinance or resolution to extend the exemption(s). Notable state sales tax exemptions that are not necessarily available at the county level include the exemptions for: machinery; electricity, gas, and heating oil; food for home consumption; sales by charities; and retail marijuana. Sales taxes assessed by 50 counties are administered by the state DOR, which collects tax revenue

¹Alaska, Delaware, Montana, New Hampshire, and Oregon do not assess sales taxes.

²Section 39-26-104, C.R.S.

³Section 29-2-103, C.R.S.

⁴Section 29-2-105 (1)(d), C.R.S.

and remits the tax to the appropriate county. The provisions governing county taxes do not apply to the consolidated city-county governments of Denver and Broomfield, each of which has a home rule charter. Twelve counties do not assess a sales tax.

Municipal taxes. Provisions for municipal taxes vary greatly according to whether the municipality has adopted a home rule charter pursuant to Article XX of the Colorado Constitution. Municipalities that have not adopted a home rule charter are authorized in statute to assess sales or use taxes in a manner similar to the county taxes described above. Municipalities that have adopted a home rule charter have broad jurisdiction over their own sales taxes and generally are not bound by statutory sales tax requirements.

Statutory municipalities. With voter approval, municipalities that have not adopted a home rule charter (statutory municipalities) are authorized to assess a sales tax, use tax, or both.⁵ Sales taxes assessed by these municipalities are imposed on the same collection of goods and services as the state sales tax, except that certain state sales tax exemptions are not by default extended to municipalities.⁶ In these cases, the city or town council may adopt an ordinance or resolution to extend the exemption(s). Municipal sales taxes are administered by the state DOR, which collects tax revenue and remits the tax to the appropriate municipality.

Home rule municipalities. Article XX, Section 6, of the Colorado Constitution empowers any municipality with a population of 2,000 people or more to adopt a home rule charter with voter approval. Home rule municipalities have broad latitude to govern themselves in matters of local concern.⁷ With voter approval, home rule municipalities may assess sales or use taxes on a locally determined collection of goods and services. Because municipal taxes need not be assessed on the same tax base as the state, home rule municipalities may variously tax transactions that are exempted at the state level or exempt transactions that are taxed at the state level. Additionally, home rule municipalities may tax specific goods or services at a different rate from others. For example, the City and County of Denver, a home rule government, assesses a tax of 3.65 percent on most taxable transactions, but assesses a tax of 4.00 percent on sales of food for immediate consumption, e.g., at restaurants.

Home rule municipalities may choose whether to collect and administer their sales taxes locally. Municipalities that choose to collect their own sales taxes may develop their own systems for licensure, remittance, and auditing. There are 96 home rule municipalities that assess a sales tax. According to the DOR, 70 home rule municipalities collect and administer their own sales taxes.⁸ The DOR collects and administers sales taxes for home rule municipalities that choose not to administer taxes at the local level.

Special districts. With voter approval, certain special districts and other limited purpose governmental entities are permitted to assess sales taxes up to certain tax rate limits. Special districts authorized to assess sales taxes include:

- the Regional Transportation District (RTD) in the Denver metropolitan area;
- the Scientific and Cultural Facilities District (SCFD) in the Denver metropolitan area;
- local improvement districts in Boulder, Broomfield, Douglas, Jefferson, and Mesa Counties;

⁵Section 29-2-102, C.R.S.

⁶Section 29-2-105 (1)(d), C.R.S.

⁷*City and County of Denver v. Qwest Corp.*, 18 P.3d at 754 (Colo. 2001).

⁸Colorado Department of Revenue form DR 1002. <http://www.colorado.gov/pacific/sites/default/files/DR1002.pdf>.

- mass transportation systems in Eagle, Pitkin, and Summit Counties;
- regional transportation authorities in Eagle, El Paso, Garfield, Gunnison, Logan, Pitkin, and San Miguel Counties;
- a multi-jurisdictional housing authority in Summit County;
- a public safety improvement district in Montrose County;
- metropolitan districts in Eagle and Jefferson Counties;
- a health services district in Montezuma County; and
- local marketing districts in Alamosa, Eagle, Grand, Gunnison, Moffat, and Routt Counties.

Statutory requirements for each special district sales tax are included in the portion of state law that authorizes creation of the particular type of special district. In general, all special district sales taxes are collected and administered at the state level. The tax base for special districts is generally consistent with the state tax base, and changes to the state base (i.e., via the creation or repeal of a sales tax exemption) are extended by default to special districts.

Tax geographies. In its presentation to the task force, the DOR identified 756 unique geographies resulting from overlapping combinations of 294 taxing authorities, including the state, counties, municipalities, and special districts that collect sales taxes. This complicated system of overlapping jurisdictions poses challenges for businesses in terms of identifying the correct taxing authorities, determining which sales are taxable under which jurisdictions' tax bases and definitions, and remitting tax to the correct combination of state and local agencies. Issues with tax compliance are further exacerbated by changes in municipal and special district boundaries. The DOR recorded 129 land annexations in Colorado during 2016.

Local sales tax audit. The Office of the State Auditor (OSA) conducted an audit of the DOR's collections of local sales taxes in 2015. The audit is available [online](#).⁹ The audit found that the DOR's system for coding and tracking retailers by taxing jurisdictions was often faulty, resulting in the incorrect registration of 11,070 of 103,836, or 11 percent, of retailers reviewed during the audit. Because of incorrect registrations, sales taxes were erroneously over collected by \$3.3 million and erroneously under collected by \$3.8 million during 2014, a net loss of \$0.5 million to local governments.

The OSA recommended that the DOR develop geographic information system (GIS) tools to assist its staff in registering businesses to the correct local tax jurisdictions. The OSA also recommended that the DOR evaluate the potential to create a state-managed database that would provide applicable sales tax information to businesses. The DOR testified to the task force that it does not operate its own GIS database, but that private database providers are certified by the DOR if they attain a 95 percent accuracy rate. Three providers are certified and have a free lookup tool, including Exactor, Pitney Bowes, and Sovos.

Uniform tax base study. House Bill 13-1288 required the DOR to conduct a study of establishing a revenue-neutral uniform sales and use tax base throughout the state. The study is available [online](#).¹⁰ The study found that achieving revenue neutrality while implementing a uniform sales and use tax base would require most jurisdictions to change their sales tax rate. For example, the study found that the City of Ault in Weld County, which assesses taxes on a broad base of transactions at a rate of 3 percent, would need to increase its tax rate to 47 percent in order to achieve revenue neutrality while adopting all state sales tax exemptions.

⁹<https://leg.colorado.gov/audits/local-sales-taxes>.

¹⁰<http://www.colorado.gov/pacific/sites/default/files/Uniform%20Sales%20and%20Use%20Tax%20Base.pdf>.

To avoid such high tax rates, the DOR study recommended repealing most state tax exemptions and utilizing a broad tax base across the state, allowing most municipalities to reduce their tax rates and avoiding required elections under TABOR, described below.

TABOR. Article X, Section 20, of the Colorado Constitution was added via ballot initiative in 1992. This section, known as the Taxpayer’s Bill of Rights or TABOR, prohibits the state government and all local governments from enacting or increasing taxes without voter approval. TABOR complicates simplification efforts because proposals to narrow the tax base, e.g., in local jurisdictions that have not enacted sales tax exemptions found at the state level, require voter approval to enact corresponding tax rate increases in order to offset revenue loss. Thus, jurisdictions that currently assess sales taxes on a broader collection of goods and services than those taxed by the state must either maintain their dissimilar tax base, narrow the base while increasing tax rates with voter approval, or narrow the base without voter approval and experience a decrease in revenue.

Coalition to Simplify Colorado Sales Tax. The task force received testimony from the Coalition to Simplify Colorado Sales Tax, an organization of businesses supporting the simplification of the state and local taxes. In its presentation to the task force, this organization identified four key issues that businesses are interested in resolving. First, the organization suggested that steps could be taken to reduce licensure and remittance requirements so that retailers are not required to license and remit taxes separately in each jurisdiction. Second, the organization called for resolution to conflicting definitions of taxable and exempt products across different jurisdictions through the establishment of either uniform definitions or a uniform sales tax base. Third, the organization asked that the state create a central database of sales and use tax information on which businesses could rely without being penalized for database inaccuracies. Fourth, the organization called for consolidation of audit authority so that retailers are not exposed to sales tax audits from multiple jurisdictions at once.

Overview of Other States’ Efforts to Simplify Their Sales and Use Tax System

The task force received presentations from several organizations, including the Council on State Taxation, the Tax Foundation, and Streamlined Governing Board, Inc., on the topic of what other states have done to simplify their sales and use tax systems, including efforts organized at a national level. These organizations suggested courses of action that Colorado could follow in order to simplify its relatively complicated sales and use tax system.

Arizona. These organizations discussed the recent sales and use tax simplification efforts undertaken in Arizona. Beginning January 1, 2017, Arizona’s state government began administering local sales taxes at the state level. Previously, local sales taxes had been administered at a local level. Arizona joined with a majority of other states that allow local jurisdictions to assess sales taxes, but administer these taxes at the state level.

Streamlined Sales and Use Tax Governing Board, Inc. As of the beginning of 2017, 23 states were full-member states in the Streamlined Sales Tax Governing Board, Inc., organization and had adopted legislation conforming with the Streamlined Sales and Use Tax Agreement (SSUTA). Among its various components, the SSUTA includes state level administration, including collection and auditing, and uniform state and local tax bases with specific exceptions. The Streamlined organization generally assists states as they work to administer a simpler and more uniform sales and use tax system for all sellers. Colorado is the only state with a statewide sales tax that does not participate in any way with the Streamlined organization.

Federal Legislation

The task force heard from the Council on State Taxation, the Tax Foundation, and the Streamlined Sales Tax Project about their efforts to simplify sales tax administration at the national level, including explanations of federal legislation related to the collection of sales tax by out-of-state (remote) retailers.

One such piece of federal legislation is the "Marketplace Fairness Act" (MFA). The MFA has been introduced multiple times and would require out-of-state retailers with over \$1 million in annual sales to collect and remit sales taxes to states that are either members of the streamlined sales tax project or that have met minimum simplification requirements for sales tax administration. The minimum simplification requirements are as follows:

- create a uniform sales tax base;
- remit sales taxes to a single entity;
- audit sales tax collection through a single entity;
- provide for the electronic remittance of sales taxes;
- provide software to calculate sales taxes anywhere in the state; and
- provide a single form for the remittance of all sales taxes.

The Council on State Taxation, the Tax Foundation, and the Streamlined Sales Tax Project testified that Colorado's sales tax system presents challenges in meeting requirements in federal legislation allowing states and local governments to collect sales tax revenue from out-of-state retailers. In 2013, Colorado enacted House Bill 13-1295 in an effort to meet the minimum simplification requirements in the MFA. While the bill took effect on July 1, 2014, certain provisions take effect either when the MFA passes or when Congress enacts other legislation authorizing states to require certain retailers to pay, collect, or remit state or local sales taxes. Under the bill, the DOR will be responsible for collecting, administering, and auditing sales taxes collected by out-of-state retailers and will be responsible for distributing this revenue to the appropriate local taxing jurisdiction in Colorado. Out-of-state retailers will use the state tax base to determine if goods and services are taxable. In-state retailers, those with a physical presence in Colorado, will not be affected by the passage of House Bill 13-1295.

Congress has not enacted the MFA. In 2013, it passed the Senate on a vote of 69 to 27, but was not considered in the House of Representatives. The act was reintroduced in 2017. In addition, Congress introduced the Remote Transactions Parity Act in 2017 as an alternative to the Marketplace Fairness Act; this bill has not been enacted either. The Remote Transactions Parity Act has the same simplification requirements as the MFA; however, it includes stronger auditing requirements and phases in the small seller exemption from \$10 million over four years.

Software Providers

The task force received presentations from several software companies, including Sovos, Pitney Bowes, Vertex, Avalara, MUNIREvs, and Fast Enterprises, about the work they do related to providing various tax services to businesses and governments. These software companies discussed their efforts to help businesses comply with the complex sales and use tax system and provide local governments with software that matches all of their individualized needs.

Certified services providers. Some of the companies that presented to the task force are certified under the SSUTA as certified service providers (CSPs). CSPs are companies that perform almost all of a seller’s sales and use tax functions, thereby allowing to a business to outsource most of its sales tax administration responsibilities to the CSP.

Update on the Colorado Municipal League’s Standardized Definitions Project

Home rule municipalities have the authority to define what is taxable and what is exempt from their sales taxes. As a result, different jurisdictions sometimes use different definitions for the same term. At the urging of the General Assembly¹¹ in 2014, home rule municipalities and the Colorado Municipal League (CML) began to update a set of standardized definitions that home rule municipalities developed in 1992. A set of current standardized definitions were finalized in 2017 that can be adopted by self-collecting municipalities.

In 1992, home rule municipalities developed a set of standardized definitions; however, there was no mechanism to maintain the uniformity of definitions among jurisdictions over time. Starting with the 1992 definitions, representatives from each of Colorado’s self-collecting local governments developed new uniform definitions that are consistent with current practice. Several new definitions were added to reflect the use of new terms by three or more jurisdictions.

Once the new definitions were developed by tax professionals representing home rule jurisdictions, they were reviewed by city attorneys and tax professionals in the business community. Some revisions were made following the input of city attorneys and the business community. A model ordinance with finalized definitions is available for adoption by individual municipalities. The definitions were crafted in an attempt to have a *de minimis* impact on revenue.

The Colorado sales tax system will be more uniform as more jurisdictions continue working toward the adoption of the standardized definitions. As of November 1, 2017, the 20 self-collecting jurisdictions listed below¹² have adopted the standardized definitions, representing 28.6 percent of the 70 self-collecting home rule jurisdictions. The General Assembly has not enacted the standardized definitions in state law.

Arvada	Cortez	Fort Collins	Greenwood Village	Northglenn
Aspen	Dacono	Frisco	Gypsum	Parker
Aurora	Denver	Golden	Longmont	Westminster
Avon	Edgewater	Greeley	Louisville	Wheat Ridge

The standardized definitions will need to be updated over time and new definitions will be added. The process of updating definitions is still being determined by CML and participating home rule municipalities.

The task force sent home rule municipalities a letter urging their adoption of the standardized definition ordinance. A copy of this letter can be found in Attachment A.

¹¹In 2014, the General Assembly approved Senate Joint Resolution 14-038.

¹²Source: Colorado Municipal League.

Summary of Public Comment

The task force heard from the following individuals representing various municipalities and organizations during the public comment sections of each meeting:

- Jeff Hansen, City of Golden;
- Totsy Rees, Enterprise Holdings;
- Trevor Vaughn, City of Aurora;
- Joe Suppers, Node Com, Inc.;
- Nicole Heide, Food Services of America;
- Jennifer Goodrum, Colorado Dental Association;
- Owen Nieberg, All About Braces;
- Laura Williams, Martin Marietta Materials;
- Mayor Jackie Millet, City of Lone Tree and the Metro Mayor's Caucus;
- Mayor Cathy Noon, City of Centennial and the Metro Mayor's Caucus;
- Edward Rothschild, Alphagraphics;
- Tommy Skul, Sport Clips;
- Steven Steele, Keesen Landscape Management and Associated Landscape Contractors of Colorado;
- Lynn Hollibaugh, Encore Electric;
- Alan Smith, Sales Tax Colorado, LLC.;
- Vickie Hurst, LafargeHolcim & Aggregate Industries; and
- Lee Nelson, American Furniture Warehouse.

Summary of Recommendation

The task force recommended one bill to the Legislative Council for consideration in the 2018 session.

Bill A — DOR Issue Sales Tax Request for Information

The bill requires the Department of Revenue to issue a request for information regarding the potential to contract for an electronic sales and use tax simplification system. The system would be available for use by the state and local governments, at their discretion, and would provide:

- accurate address location information;
- a single application process for sales tax licenses;
- a uniform sales tax remittance form;
- a single point of remittance for sales and use tax; and
- a taxability or exemption matrix.

The information provided must identify initial costs and ongoing annual costs, as well as methods for payment by different public or private entities.

The DOR is required to notify the task force when the request for information has been issued. The task force is required to meet within 90 days of receiving this notification to consider information received and determine its next steps.

Resource Materials

Meeting summaries are prepared for each meeting of the task force and contain all handouts provided to the task force. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver (303-866-2055). The listing below contains the dates of task force meetings and the topics discussed at those meetings. Meeting summaries are also available on our website at:

<http://leg.colorado.gov/committees/sales-and-use-tax-simplification-task-force/2017-regular-session>

Meeting Dates and Topics Discussed

July 11, 2017

- ◆ Task force member and staff introductions
- ◆ Overview of House Bill 17-1216
- ◆ Overview of the current sales and use tax system from the Colorado Department of Revenue, Colorado Municipal League, Colorado Counties, Inc., and the business community
- ◆ Public comment

August 15, 2017

- ◆ Presentation from the Special District Association
- ◆ Presentation from the Colorado Tax Auditors Coalition
- ◆ Discussion of local control
- ◆ Discussion about other states' efforts to simplify their sales and use tax systems
- ◆ Public comment

September 15, 2017

- ◆ Presentation about the Streamlined Sales Tax Governing Board, Inc.
- ◆ Presentation from various software providers
- ◆ Public comment
- ◆ Bill requests

November 1, 2017

- ◆ Presentation from the Statewide Internet Portal Authority
- ◆ Presentation from various software providers
- ◆ Public comment
- ◆ Bill draft voting

Appendix

Letters Sent to Task Force

In addition to the public testimony heard by the task force, the task force also received two letters from interested parties, including:

- Castle Rock Town Council (Attachment B); and
- 1st Electric Contractors (Attachment C).

Colorado Municipal League's Standardized Definitions Project Information

Additional information about CML's standardized definitions project can be found here: <https://www.cml.org/issues.aspx?taxid=11113>. A copy of the model ordinance can be found in Attachment D.

COLORADO GENERAL ASSEMBLY

LEGISLATIVE MEMBERS

Rep. Tracy Kraft-Tharp, Chairman
 Sen. Tim Neville, Vice Chairman
 Sen. Cheri Jahn
 Rep. Lang Sias



NON-LEGISLATIVE MEMBERS

Bryan Archer
 Paul Archer
 Kristen Baumgartner
 Judith Birch Vorndran
 Dianne Criswell
 Steve Ellington
 Tracy Hines
 Bruce Nelson
 Heather Pezzella
 Neil Pomerantz
 Brendon Reese

COMMITTEE STAFF

Luisa Altmann
 Greg Sobetski
 Larson Silbaugh
 Esther van Mourik

SALES AND USE TAX SIMPLIFICATION TASK FORCE

ROOM 029 STATE CAPITOL
 DENVER, COLORADO 80203-1784
 E-mail: lcs.ga@state.co.us
 303-866-3521 FAX: 303-866-3855

August 31, 2017

Colorado's system of local collection of sales and use tax by home rule municipalities can be cumbersome and difficult for multijurisdictional merchants. In 2017, the Colorado General Assembly passed a bill creating the Sales and Use Tax Simplification Task Force (Task Force) in order to study solutions to these issues.

Presentations to the Task Force have addressed the Standard Sales Tax Definitions Project, undertaken by the Colorado Municipal League (CML) in 2014 after the Colorado General Assembly adopted Senate Joint Resolution 14-038, which asked CML to work with its members to develop a package of uniform definitions recommended for adoption by all home rule, locally collecting municipalities. Since 2014, 14 out of 70 locally collecting home rule municipalities have adopted the uniform definitions.

The state, local governments, and businesses alike agree that standardized definitions of the goods or services subject to sales or use tax and the goods or services exempted from sales or use tax (known as the "sales and use tax base") would improve Colorado's business environment.

The Sales and Use Tax Simplification Task Force strongly agrees and urges all municipalities that have not yet adopted the Sales Tax Simplification Model Ordinance to consider the benefits of standardized sales tax definitions to your locally collecting city or town, as well as your resident and multijurisdictional businesses that work hard to collect your sales tax. No new tax will be levied and no increase in tax revenue is expected when you adopt the Model Ordinance because the definitions were drafted to reflect current tax practices. The Task Force strongly supports simplification efforts originating at the local level.

Sincerely,

Representative Tracy Kraft-Tharp, HD 29
 Chair, Sales and Use Tax Simplification Task Force



September 6, 2017

Sales and Use Tax Simplification Task Force
c/o Luisa Altmann, Research Analyst
200 E. Colfax Ave.
Denver, CO 80203

Task Force Members:

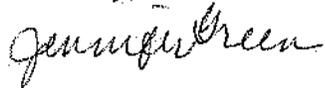
On behalf of the Castle Rock Town Council, I am writing to stress the importance of the Town retaining the ability to control its own sales tax rate, base, collection and auditing functions. We respectfully urge you reject any changes to Colorado's sales tax system that would diminish the Town's home rule authority in these areas.

Castle Rock is a full-service municipality in which fire/EMS, police, parks maintenance, planning, code enforcement and general government services all are provided through taxation. Sales tax makes up 26.1% of total Town revenue, while property tax makes up less than 1%. Within our General Fund – which provides for public safety services in our growing community of more than 64,000 residents – these percentages are 64% and 2.3%, respectively. That the Town is so reliant upon sales tax to provide these core community services makes it especially critical for the Town to retain the ability to control its own sales tax-related functions.

The Town began local sales tax collection and auditing in 2003 and discovered hundreds of unlicensed retailers had been doing business in Castle Rock. Self-collecting and auditing sales tax contributed to a revenue increase between 2003 and 2004 of \$2.5 million, or 14.9%. In the years since, we estimate self-collection and auditing has increased Town revenue by at least \$8 million total. Reverting to a State-collected sales tax system would lead to a decrease in Town sales tax revenue, which would reduce the Town's ability to deliver critical public safety services. Further, this would create a greater reliance on property tax and could lead the Town to have to ask voters for a property tax increase in order to maintain current levels of service.

It is simply not credible in this digital day that it is overly cumbersome for retailers to operate in multiple jurisdictions. The trade-off of having a "simpler" tax system by having one Statewide collection point is not a good one for the Town of Castle Rock. Please do not diminish the Town's home rule authority and cause additional burden on our Town taxpayers by implementing changes to how sales taxes are collected and audited in Colorado.

Sincerely,



Jennifer Green
Mayor

Cc: Senator Jim Smallwood
Representative Patrick Neville
Metro Mayors' Caucus
Colorado Municipal League

September 15, 2017

Dear Sales and Use Tax Simplification Task Force Members,

I am writing to you today in my capacity as a corporate officer on behalf of 1st Electric Contractors, an electrical contractor and Colorado small business located in Lakewood.

Though our business is not a sales tax collecting entity, I have had an immeasurable amount of first-hand experience with the conundrum that is sales and use tax laws in Colorado. As a contractor, we are subject to the rules and processes of each of the unique local tax jurisdictions in which our projects are located. Currently, we have projects within 12 different cities and counties. Our company spends an estimated 360 labor hours per year—with an estimated cost of \$16,722—on the following sales and use tax tasks:

- Verifying that the appropriate project-specific sales tax rate was applied on every AP invoice processed by our office
- Requesting rebills from vendors on invoices that were improperly taxed
- Requesting credits on jobs that have had a sales tax rate change
- Preparing and submitting use tax returns
- Preparing for and participating in use tax audits

Varying and often convoluted tax statutes within home rule cities create much of the burden we experience. By way of example, Lakewood and Denver consider core drilling done by a third party to be a “rental with an operator provided” and therefore subject to city sales and/or use tax. Lakewood also believes that delivery charges are subject to sales and/or use tax, though many other jurisdictions do not. These are two of many examples.

The home rule cities’ tax statutes are often plagued with so many nuances that their own auditors do not understand them. In the last sales and use tax audits I had with the City of Lakewood and the City of Denver, I was able to reduce our final tax, penalties and interest due by 58% and 92%, respectively, using their own tax statutes and at the expense of my labor. Sales and use tax should not be so complicated.

In closing, we have three suggested changes to the sales and use tax standards that we believe would benefit all stakeholders as it pertains to construction:

1. Any construction project declared state tax exempt should also be exempt from local taxes.
2. Use tax collection for the applicable city and/or the county at the time of permit on all projects.
3. All tax jurisdictions should implement incremental use tax in instances where a legally imposed sales tax occurred at the time of sale.

Thank you for your time and your consideration of the issues aforementioned.

Sincerely,



Lindsey Cox
Vice President of Human Resources & Finance

2016 SALES TAX SIMPLIFICATION MODEL ORDINANCE**I. Standardized Definitions**

SECTION ____. **WORDS AND PHRASES DEFINED:** The following words and phrases as used in this chapter shall have the following meaning:

- (1) **“Agricultural Producer”** means a person regularly engaged in the business of using land for the production of commercial crops or commercial livestock. The term includes farmers, market gardeners, commercial fruit growers, livestock breeders, dairymen, poultrymen, and other persons similarly engaged, but does not include a person who breeds or markets animals, birds, or fish for domestic pets nor a person who cultivates, grows, or harvests plants or plant products exclusively for that person's own consumption or casual sale.
- (2) **“Aircraft”** means a device that is used or intended to be used for flight in the air.
- (3) **“Aircraft Part”** means any tangible personal property that is intended to be permanently affixed or attached as a component part of an aircraft.
- (4) **“Aircraft Simulator”** means a Flight Simulator Training Device (FSTD) as defined in Part I of Title 14 of the Code of Federal Regulations that is qualified in accordance with Part 60 of Title 14 of the Code of Federal Regulations for use in a Federal Aviation Administration Approved Flight Training Program.
- (5) **“Aircraft Simulator Part”** means any tangible personal property that is originally designed and intended to be permanently affixed or attached as a component part of an aircraft, and which will also function when it is permanently affixed or attached as a component part of an aircraft simulator.
- (6) **“Airline Company”** means any operator who engages in the carriage by aircraft of persons or property as a common carrier for compensation or hire, or the carriage of mail, or any aircraft operator who operates regularly between two (2) or more points and publishes a flight schedule. Airline Company shall not include operators whose aircraft are all certified for a gross takeoff weight of twelve thousand five hundred (12,500) pounds or less and who do not engage in scheduled service or mail carriage service.
- (7) **“Auction”** means any sale where tangible personal property is sold by an auctioneer who is either the agent for the owner of such property or is in fact the owner thereof.
- (8) **“Automotive Vehicle”** means any vehicle or device in, upon, or by which any person or property is or may be transported or drawn upon a public highway, or any device used or designed for aviation or flight in the air. Automotive Vehicle includes, but is not limited to, motor vehicles, trailers, semi-trailers, or mobile homes. Automotive Vehicle shall not include devices moved by human power or used exclusively upon stationary rails or tracks.

- (9) **“Business”** means all activities engaged in or caused to be engaged in with the object of gain, benefit, or advantage, direct or indirect.
- (10) **“Candy”** means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruit, nuts, or other ingredients or flavorings in the form of bars, drops, or pieces. Candy does not include any preparation containing flour, products that require refrigeration or marijuana infused products.
- (11) **“Carrier Access Services”** means the services furnished by a local exchange company to its customers who provide telecommunications services which allow them to provide such telecommunications services.
- (12) **“Charitable Organization”** means any entity which: (1) has been certified as a nonprofit organization under Section 501(c)(3) of the Internal Revenue Code, and (2) is an organization which exclusively, and in a manner consistent with existing laws and for the benefit of an indefinite number of persons or animals, freely and voluntarily ministers to the physical, mental, or spiritual needs of persons or animals, and thereby lessens the burden of government.
- (13) **“City”** or **“Town”** means the municipality of (name of municipality).
- (14) **“Coins”** means monetized bullion or other forms of money manufactured from gold, silver, platinum, palladium or other such metals now, in the future or heretofore designated as a medium of exchange under the laws of this State, the United States or any foreign nation.
- (15) **“Coin Operated Device”** means any device operated by coins or currency or any substitute therefor.
- (16) **“Collection Costs”** shall include, but is not limited to, all costs of audit, assessment, bank fees, hearings, execution, lien filing, distraint, litigation, locksmith fees, auction fees and costs, prosecution and attorney fees.
- (17) **“Commercial Packaging Materials”** means containers, labels, and/or cases, that become part of the finished product to the purchaser, used by or sold to a person engaged in manufacturing, compounding, wholesaling, jobbing, retailing, packaging, distributing or bottling for sale, profit or use, and is not returnable to said person for reuse. Commercial Packaging Materials does not include Commercial Shipping Materials.
- (18) **“Commercial Shipping Materials”** means materials that do not become part of the finished product to the purchaser which are used exclusively in the shipping process. Commercial Shipping Materials include but are not limited to containers, labels, pallets, banding material and fasteners, shipping cases, shrink wrap, bubble wrap or other forms of binding, padding or protection.
- (19) **“Community Organization”** means a nonprofit entity organized and operated exclusively for the promotion of social welfare, primarily engaged in promoting the common good and

general welfare of the community, so long as: (1) No part of the net earnings of which inures to the benefit of any private shareholder or individual; (2) No substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation; and (3) Which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.

- (20) **“Construction Equipment”** means any equipment, including mobile machinery and mobile equipment, which is used to erect, install, alter, demolish, repair, remodel, or otherwise make improvements to any real property, building, structure or infrastructure.
- (21) **“Construction Materials”** means tangible personal property which, when combined with other tangible personal property, loses its identity to become an integral and inseparable part of a structure or project including public and private improvements. Construction Materials include, but are not limited to, such things as: asphalt, bricks, builders' hardware, caulking material, cement, concrete, conduit, electric wiring and connections, fireplace inserts, electrical heating and cooling equipment, flooring, glass, gravel, insulation, lath, lead, lime, lumber, macadam, millwork, mortar, oil, paint, piping, pipe valves and pipe fittings, plaster, plumbing fixtures, putty, reinforcing mesh, road base, roofing, sand, sanitary sewer pipe, sheet metal, site lighting, steel, stone, stucco, tile, trees, shrubs and other landscaping materials, wall board, wall coping, wallpaper, weather stripping, wire netting and screen, water mains and meters, and wood preserver. The above materials, when used for forms, or other items which do not remain as an integral and inseparable part of completed structure or project are not construction materials.
- (22) **“Consumer”** means any person in the City who purchases, uses, stores, distributes or otherwise consumes tangible personal property or taxable services, purchased from sources inside or outside the City.
- (23) **“Contract Auditor”** means a duly authorized agent designated by the taxing authority and qualified to conduct tax audits on behalf of and pursuant to an agreement with the municipality.
- (24) **“Contractor”** means any person who shall build, construct, reconstruct, alter, expand, modify, or improve any building, dwelling, structure, infrastructure, or other improvement to real property for another party pursuant to an agreement. For purposes of this definition, Contractor also includes subcontractor.
- (25) **“Cover Charge”** means a charge paid to a club or similar entertainment establishment which may, or may not, entitle the patron paying such charge to receive tangible personal property, such as food and/or beverages.
- (26) **“Data Processing Equipment”** means any equipment or system of equipment used in the storage, manipulation, management, display, reception or transmission of information.

- (27) **“Digital Product”** means an electronic product including, but not limited to: (1) “digital images” which means works that include, but are not limited to, the following that are generally recognized in the ordinary and usual sense as “photographs,” “logos,” “cartoons,” or “drawings.” (2) “digital audio-visual works” which means a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any, (3) “digital audio works” which means works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones. For purposes of the definition of “digital audio works”, “ringtones” means digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication, and (4) “digital books” which means works that are generally recognized in the ordinary and usual sense as “books”.
- (28) **“Distribution”** means the act of distributing any article of tangible personal property for use or consumption, which may include, but not be limited to, the distribution of advertising gifts, shoppers guides, catalogs, directories, or other property given as prizes, premiums, or for goodwill or in conjunction with the sales of other commodities or services.
- (29) **“Dual Residency”** means those situations including, but not limited to, where a person maintains a residence, place of business or business presence, both within and outside the City. A person shall be deemed to have established a legitimate residence, place of business or business presence outside of the City for purposes of dual residency if the person has a physical structure owned, leased or rented by such person which is designated by street number or road location outside of the City, has within it a telephone or telephones in the name of such person and conducts business operations on a regular basis at such location in a manner that includes the type of business activities for which the business (person), as defined in this Code, is organized.
- (30) **“Dwelling Unit”** means a building or any portion of a building designed for occupancy as complete, independent living quarters for one (1) or more persons, having direct access from the outside of the building or through a common hall and having living, sleeping, kitchen and sanitary facilities for the exclusive use of the occupants.
- (31) **“Engaged in Business in the City”** means performing or providing services or selling, leasing, renting, delivering or installing tangible personal property for storage, use or consumption, within the City. Engaged in Business in the City includes, but is not limited to, any one of the following activities by a person: (1) Directly, indirectly, or by a subsidiary maintains a building, store, office, salesroom, warehouse, or other place of business within the taxing jurisdiction; (2) Sends one or more employees, agents or commissioned sales persons into the taxing jurisdiction to solicit business or to install, assemble, repair, service, or assist in the use of its products, or for demonstration or other reasons; (3) Maintains one or more employees, agents or commissioned sales persons on duty at a location within the taxing jurisdiction; (4) Owns, leases, rents or otherwise exercises control over real or personal property within the taxing jurisdiction; or (5) Makes more than one delivery into the taxing jurisdiction within a twelve month period by any means other than a common carrier.

- (32) **“Factory Built Housing”** means a manufactured home or modular home.
- (33) **“Farm Closeout Sale”** means full and final disposition of all tangible personal property previously used by a farmer or rancher in farming or ranching operations which are being abandoned.
- (34) **“Farm Equipment”** means any farm tractor, as defined in Section 42-1-102(33), C.R.S., any implement of husbandry, as defined in Section 42-1-102(44), C.R.S., and irrigation equipment having a per unit purchase price of at least one thousand dollars (\$1,000.00). Farm Equipment also includes, regardless of purchase price, attachments and bailing wire, binders twine and surface wrap used primarily and directly in any farm operation. Farm Equipment also includes, regardless of purchase price, parts that are used in the repair or maintenance of the Farm Equipment described in this Paragraph, all shipping pallets, crates, or aids paid for by a farm operation, and aircraft designed or adapted to undertake agricultural applications. Farm Equipment also includes, regardless of purchase price, dairy equipment. Except for shipping pallets, crates or aids used in the transfer or shipping of agricultural products, Farm Equipment does not include: (1) Vehicles subject to the registration requirements of Section 42-3-103, C.R.S., regardless of the purpose for which such vehicles are used; (2) Machinery, equipment, materials, and supplies used in a manner that is incidental to a farm operation; (3) Maintenance and janitorial equipment and supplies; and (4) Tangible personal property used in any activity other than farming, such as office equipment and supplies and equipment and supplies used in the sale or distribution of farm products, research, or transportation.
- (35) **“Farm Operation”** means the production of any of the following products for profit, including, but not limited to, a business that hires out to produce or harvest such products: (1) Agricultural, viticultural, fruit, and vegetable products; (2) Livestock; (3) Milk; (4) Honey; and (5) Poultry and eggs.
- (36) **“Finance Director”** means the Finance Director of (name of municipality) or such other person designated by the municipality; Finance Director shall also include such person's designee.
- (37) **“Food For Home Consumption”** means food for domestic home consumption as defined in 7 U.S.C. sec. 2012 (k) (2014), as amended, for purposes of the supplemental nutrition assistance program, or any successor program, as defined in 7 U.S.C. sec. 2012 (t), as amended; except that "food" does not include carbonated water marketed in containers; chewing gum; seeds and plants to grow foods; prepared salads and salad bars; packaged and unpackaged cold sandwiches; deli trays; and hot or cold beverages served in unsealed containers or cups that are vended by or through machines or non-coin-operated coin-collecting food and snack devices on behalf of a vendor.
- (38) **“Garage Sales”** means sales of tangible personal property, except automotive vehicles, occurring at the residence of the seller, where the property to be sold was originally

purchased for use by members of the household where such sale is being conducted. The term includes, but is not limited to, yard sales, estate sales, and block sales.

- (39) **“Gross Sales”** means the total amount received in money, credit, property or other consideration valued in money for all sales, leases, or rentals of tangible personal property or services.
- (40) **“Internet Access Services”** means services that provide or enable computer access by multiple users to the Internet, but shall not include that portion of packaged or bundled services providing phone or television cable services when the package or bundle includes the sale of Internet Access Services.
- (41) **“Internet Subscription Service”** means software programs, systems, data and applications available online through rental, lease or subscription, that provide information and services including, but not limited to, data linking, data research, data analysis, data filtering or record compiling.
- (42) **“License”** means a (name of municipality) sales and/or use tax license.
- (43) **“Linen Services”** means services involving the provision and cleaning of linens, including but not limited to rags, uniforms, coveralls and diapers.
- (44) **“Machinery”** means any apparatus consisting of interrelated parts used to produce an article of tangible personal property. The term includes both the basic unit and any adjunct or attachment necessary for the basic unit to accomplish its intended function.
- (45) **“Manufactured Home”** means any preconstructed building unit or combination of preconstructed building units, without motive power, where such unit or units are manufactured in a factory or at a location other than the residential site of the completed home, which is designed and commonly used for occupancy by persons for residential purposes, in either temporary or permanent locations, and which unit or units are not licensed as a vehicle.
- (46) **“Manufacturing”** means the operation or performance of an integrated series of operations which places a product, article, substance, commodity, or other tangible personal property in a form, composition or character different from that in which it was acquired whether for sale or for use by a manufacturer. The change in form, composition or character must result in a different product having a distinctive name, character or use from the raw or prepared materials.
- (47) **“Medical Marijuana”** means marijuana acquired, possessed, cultivated, manufactured, delivered, transported, supplied, sold, or dispensed to a person who qualifies as a patient with a debilitating medical condition(s) under Article XVIII, Section 14, of the Colorado Constitution, and which person holds a valid “registry identification card” issued by the State of Colorado pursuant to Colorado Constitution, Article XVIII, Section 14.

- (48) **“Mobile Machinery and Self-Propelled Construction Equipment”** means those vehicles, self-propelled or otherwise, which are not designed primarily for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo over the public highways, and those motor vehicles which may have originally been designed for the transportation of persons or cargo but which have been redesigned or modified by the mounting thereon of special equipment or machinery, and which may be only incidentally operated or moved over the public highways. This definition includes but is not limited to wheeled vehicles commonly used in the construction, maintenance, and repair of roadways, the drilling of wells, and the digging of ditches.
- (49) **“Modular Home”** means any structure that consists of multiple sections fabricated, formed or assembled in manufacturing facilities for installation and assembly at the building site, and is constructed to the building codes adopted by the State Division of Housing, created in Section 24-32-706, C.R.S., and is designed to be installed on a permanent foundation.
- (50) **“Motor Fuel”** means gasoline, casing head or natural gasoline, benzol, benzene and naphtha, gasohol and any other liquid prepared, advertised, offered for sale, sold for use or used or commercially usable in internal combustion engines for the generation of power for the propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of aircraft or railroad cars or railroad locomotives.
- (51) **“Newspaper”** means a publication, printed on newsprint, intended for general circulation, and published regularly at short intervals, containing information and editorials on current events and news of general interest. The term Newspaper does not include: magazines, trade publications or journals, credit bulletins, advertising inserts, circulars, directories, maps, racing programs, reprints, newspaper clipping and mailing services or listings, publications that include an updating or revision service, or books or pocket editions of books.
- (52) **“Online Garage Sales”** means sales of tangible personal property, except automotive vehicles, occurring online, where the property to be sold was originally purchased for use by the seller or members of the seller’s household.
- (53) **“Parent”** means a parent of a student.
- (54) **“Person”** means any individual, firm, partnership, joint venture, corporation, limited liability company, estate or trust, receiver, trustee, assignee, lessee or any person acting in a fiduciary or representative capacity, whether appointed by court or otherwise, or any group or combination acting as a unit.
- (55) **“Photovoltaic System”** means a power system designed to supply usable solar power by means of photovoltaics, a method of converting solar energy into direct current electricity using semiconducting materials that create voltage or electric current in a material upon exposure to light. It consists of an arrangement of several components, including solar

panels to absorb and convert sunlight into electricity, a solar inverter to change the electric current from DC to AC, as well as mounting, cabling, metering systems and other electrical accessories to set up a working system.

- (56) **“Precious Metal Bullion”** means any precious metal, including but not limited to, gold, silver, platinum, palladium, that has been put through a process of refining and is in such a state or condition that its value depends upon its precious metal content and not its form.
- (57) **“Prepress Preparation Material”** means all materials used by those in the printing industry including, but not limited to, airbrush color photos, color keys, dies, engravings, light-sensitive film, light-sensitive paper, masking materials, Mylar, plates, proofing materials, tape, transparencies, and veloxes, which are used by printers in the preparation of customer specific layouts or in plates used to fill customers' printing orders, which are eventually sold to a customer, either in their original purchase form or in an altered form, and for which a sales or use tax is demonstrably collected from the printer's customer, if applicable, either separately from the printed materials or as part of the inclusive price therefor. Materials sold to a printer which are used by the printer for the printer's own purposes, and are not sold, either directly or in an altered form, to a customer, are not included within this definition.
- (58) **“Preprinted Newspaper Supplements”** shall mean inserts, attachments or supplements circulated in newspapers that: (1) are primarily devoted to advertising; and (2) the distribution, insertion, or attachment of which is commonly paid for by the advertiser.
- (59) **“Prescription Drugs for Animals”** means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect. 301, et. seq., as amended, to state at a minimum the symbol “Rx Only”, and is dispensed in accordance with any order in writing, dated and signed by a licensed veterinarian specifying the animal for which the medicine or drug is offered and directions, if any, to be placed on the label.
- (60) **“Prescription Drugs for Humans”** means a drug which, prior to being dispensed or delivered, is required by the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sect. 301, et. seq., as amended, to state at a minimum the symbol “Rx Only”, and is dispensed in accordance with any written or electronic order dated and signed by a licensed practitioner of the healing arts, or given orally by a practitioner and immediately reduced to writing by the pharmacist, assistant pharmacist, or pharmacy intern, specifying the name and any required information of the patient for whom the medicine, drug or poison is offered and directions, if any, to be placed on the label.
- (61) **“Price” or “Purchase Price”** means the aggregate value measured in currency paid or delivered or promised to be paid or delivered in consummation of a sale, without any discount from the price on account of the cost of materials used, labor or service cost, and exclusive of any direct tax imposed by the federal government or by this article, and, in the case of all retail sales involving the exchange of property, also exclusive of the fair market value of the property exchanged at the same time and place of the exchange, if: (1)

Such exchanged property is to be sold thereafter in the usual course of the retailer's business, or (2) Such exchanged property is a vehicle and is exchanged for another vehicle and both vehicles are subject to licensing, registration, or certification under the laws of this state, including, but not limited to, vehicles operating upon public highways, off-highway recreation vehicles, watercraft, and aircraft. Any money or other consideration paid over and above the value of the exchanged property is subject to tax.

Price or Purchase Price includes:

- (1) The amount of money received or due in cash and credits.
- (2) Property at fair market value taken in exchange but not for resale in the usual course of the retailer's business.
- (3) Any consideration valued in money, whereby the manufacturer or someone else reimburses the retailer for part of the purchase price and other media of exchange.
- (4) The total price charged on credit sales including finance charges which are not separately stated at the time of sale. An amount charged as interest on the unpaid balance of the purchase price is not part of the purchase price unless the amount added to the purchase price is included in the principal amount of a promissory note; except the interest or carrying charge set out separately from the unpaid balance of the purchase price on the face of the note is not part of the purchase price. An amount charged for insurance on the property sold and separately stated at the time of sale is not part of the purchase price.
- (5) Installation, applying, remodeling or repairing the property, delivery and wheeling-in charges included in the purchase price and not separately stated.
- (6) Transportation and other charges to effect delivery of tangible personal property to the purchaser.
- (7) Indirect federal manufacturers' excise taxes, such as taxes on automobiles, tires and floor stock.
- (8) The gross purchase price of articles sold after manufacturing or after having been made to order, including the gross value of all the materials used, labor and service performed and the profit thereon.

Price or Purchase Price shall not include:

- (1) Any sales or use tax imposed by the State of Colorado or by any political subdivision thereof.
- (2) The fair market value of property exchanged if such property is to be sold thereafter in the retailers' usual course of business. This is not limited to exchanges in Colorado. Out of state trade-ins are an allowable adjustment to the purchase price.
- (3) Discounts from the original price if such discount and the corresponding decrease in sales tax due is actually passed on to the purchaser, and the seller is not reimbursed for the discount by the manufacturer or someone else. An anticipated discount to be allowed for payment on or before a given date is not an allowable adjustment to the price in reporting gross sales.

(62) "Private Communications Services" means telecommunications services furnished to a subscriber, which entitles the subscriber to exclusive or priority use of any communication

channel or groups of channels, or to the exclusive or priority use of any interstate inter-communications system for the subscriber's stations.

- (63) **“Prosthetic Devices for Animals”** means any artificial limb, part, device or appliance for animal use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed veterinarian. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen concentrators with related accessories.
- (64) **“Prosthetic Devices for Humans”** means any artificial limb, part, device or appliance for human use which replaces a body part or aids or replaces a bodily function; is designed, manufactured, altered or adjusted to fit a particular patient; and is prescribed by a licensed practitioner of the healing arts. Prosthetic devices include, but are not limited to, prescribed auditory, ophthalmic or ocular, cardiac, dental, or orthopedic devices or appliances, and oxygen concentrators with related accessories.
- (65) **“Purchase” or “Sale”** means the acquisition for any consideration by any person of tangible personal property, other taxable products or taxable services that are purchased, leased, rented, or sold. These terms include capital leases, installment and credit sales, and property and services acquired by:

* (Drafter’s Note: for jurisdictions that have separate sales and use tax articles, for this definition in the sales tax article, would strike “used, stored, distributed, or consumed, and include it back in for the use tax article, but for jurisdictions with only sales tax or that combine sales and use tax in one article then include “used, stored, distributed, or consumed.)

- (1) Transfer, either conditionally or absolutely, of title or possession or both to tangible personal property, other taxable products, or taxable services;
- (2) A lease, lease-purchase agreement, rental or grant of a license, including royalty agreements, to use tangible personal property, other taxable products, or taxable services;
- (2a) OPTION: insert after "services," and before the semi-colon, "The utilization of coin operated devices, except coin-operated telephones, which do not vend articles of tangible personal property shall be considered short term rentals of tangible personal property."

* (Drafter's Note: 2a reflects the desire of several municipalities to state clearly in their codes that use of devices such as laundromat equipment is a taxable rental.)

- (3) Performance of taxable services; or
- (4) Barter or exchange for other tangible personal property, other taxable products, or services.

The terms Purchase and Sale do not include:

- (1) A division of partnership assets among the partners according to their interests in the partnership;

- (2) The transfer of assets of shareholders in the formation or dissolution of professional corporations, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
 - (3) The dissolution and the pro rata distribution of the corporation's assets to its stockholders, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
 - (4) A transfer of a partnership or limited liability company interest;
 - (5) The transfer of assets to a commencing or existing partnership or limited liability company, if no consideration including, but not limited to, the assumption of a liability is paid for the transfer of assets;
 - (6) The repossession of personal property by a chattel mortgage holder or foreclosure by a lienholder;
 - (7) The transfer of assets from a parent company to a subsidiary company or companies which are owned at least eighty percent by the parent company, which transfer is solely in exchange for stock or securities of the subsidiary company;
 - (8) The transfer of assets from a subsidiary company or companies which are owned at least eighty percent by the parent company to a parent company or to another subsidiary which is owned at least eighty percent by the parent company, which transfer is solely in exchange for stock or securities of the parent corporation or the subsidiary which received the assets;
 - (9) The transfer of assets between parent and closely held subsidiary companies, or between subsidiary companies closely held by the same parent company, or between companies which are owned by the same shareholders in identical percentage of stock ownership amounts, computed on a share-by-share basis, when a tax imposed by this article was paid by the transferor company at the time it acquired such assets, except to the extent that there is an increase in the fair market value of such assets resulting from the manufacturing, fabricating, or physical changing of the assets by the transferor company. To such an extent any transfer referred to in this paragraph (11) shall constitute a sale. For the purposes of this paragraph (11) , a closely held subsidiary corporation is one in which the parent company owns stock possessing or membership interest at least eighty percent of the total combined voting power of all classes of stock entitled to vote and owns at least eighty percent of the total number of shares of all other classes of stock.
- (65) OPTION: Same as above, except do not include subparagraphs (7), (8) and (9)
* (Drafter's Note: (65) 1 reflects a preference by a minority of municipalities to consider the transactions described in subparagraphs (7) , (8) and (9) as “purchases” or “sales”; (65) is the State's language and that utilized by most municipalities.)
- (66) “Rail Carrier”** means as defined in Section 10102 of Title 49 of the United States Code as of October 10, 2013, and as it may be amended hereafter.

- (67) **“Rail Carrier Part”** means any tangible personal property that is originally designed and intended to be permanently affixed or attached as a component part of a locomotive or rail car used by a rail carrier.
- (68) **“Recreation Services”** means all services relating to athletic or entertainment participation events and/or activities including but not limited to pool, golf, billiards, skating, tennis, bowling, health/athletic club memberships, coin operated amusement devices, video games and video club memberships.
- (69) **“Renewable Energy”** means any energy resource that is naturally regenerated over a short time scale and derived directly from the sun (such as thermal, photochemical, and photoelectric), indirectly from the sun (such as wind, hydropower, and photosynthetic energy stored in biomass), or from other natural movements and mechanisms of the environment (such as geothermal and tidal energy). Renewable Energy does not include energy resources derived from fossil fuels, waste products from fossil sources, or waste products from inorganic sources.
- (70) **“Resident”** means a person who resides or maintains one or more places of business within the City, regardless of whether that person also resides or maintains a place of business outside of the City.
- (71) **“Retail Sales”** means all sales except wholesale sales.
- (72) **“Retailer”** means any person selling, leasing, renting, or granting a license to use tangible personal property or services at retail. Retailer shall include, but is not limited to, any: (1) Auctioneer; (2) Salesperson, representative, peddler or canvasser, who makes sales as a direct or indirect agent of or obtains such property or services sold from a dealer, distributor, supervisor or employer; (3) Charitable organization or governmental entity which makes sales of tangible personal property to the public, notwithstanding the fact that the merchandise sold may have been acquired by gift or donation or that the proceeds are to be used for charitable or governmental purposes; (4) Retailer-Contractor, when acting in the capacity of a seller of building supplies, construction materials, and other tangible personal property.
- (73) **“Retailer-Contractor”** means a contractor who is also a retailer of building supplies, construction materials, or other tangible personal property, and purchases, manufactures, or fabricates such property for sale (which may include installation), repair work, time and materials jobs, and/or lump sum contracts.
- (74) **“Return”** means any form prescribed by the city/town administration for computing and reporting a total tax liability.
- (75) **“Sale that Benefits a Colorado School”** means a sale of a commodity or service from which all proceeds of the sale, less only the actual cost of the commodity or service to a person or entity as described in this Code, are donated to a school or a school-approved student organization.

- (76) **“Sales Tax”** means the tax that is collected or required to be collected and remitted by a retailer on sales taxed under this Code.
- (77) **“School”** means a public or nonpublic school for students in kindergarten through 12th grade or any portion thereof.
- (78) **“Security System Services”** means electronic alarm and/or monitoring services. Such term does not include non-electronic security services such as consulting or human or guard dog patrol services.
- (79) **“Soft Drink”** means a nonalcoholic beverage that contains natural or artificial sweeteners. “Soft drink” does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.
- (80) **“Software Program”** means a sequence of instructions that can be measured, interpreted and executed by an electronic device (e.g. a computer, tablets, smart phones) regardless of the means by which it is accessed or the medium of conveyance. Software program includes: (1) Custom software program, which is a software program prepared to the special order or specifications of a single customer; (2) Pre-written software program, which is a software program prepared for sale or license to multiple users, and not to the special order or specifications of a single customer. Pre-written software is commonly referred to as “canned,” “off-the-shelf (“COTS”),” “mass produced” or “standardized;” (3) Modified software, which means pre-written software that is altered or enhanced by someone other than the purchaser to create a program for a particular user; and (4) The generic term “software,” “software application,” as well as “updates,” “upgrades,” “patches,” “user exits,” and any items which add or extend functionality to existing software programs.
- (81) **“Software as a Service”** means software that is rented, leased or subscribed to from a provider and used at the consumer’s location, including but not limited to applications, systems or programs.
- (82) **“Software License Fee”** means a fee charged for the right to use, access, or maintain software programs.
- (83) **“Software Maintenance Agreement”** means an agreement, typically with a software provider, that may include (1) provisions to maintain the right to use the software; (2) provisions for software upgrades including code updates, version updates, code fix modifications, enhancements, and added or new functional capabilities loaded into existing software, or (3) technical support
- (84) **“Solar Thermal Systems”** means a system whose primary purpose is to use energy from the sun to produce heat or cold for: (1) Heating or cooling a residential or commercial building; (2) Heating or cooling water; or (3) Any industrial, commercial, or manufacturing process.

- (85) **“Sound System Services”** means the provision of broadcast or pre-recorded audio programming to a building or portion thereof. Such term does not include installation of sound systems where the entire system becomes the property of the building owner or the sound system service is for presentation of live performances.
- (86) **“Special Fuel”** means kerosene oil, kerosene distillate, diesel fuel, all liquefied petroleum gases, and all combustible gases and liquids for use in the generation of power for propulsion of motor vehicles upon the public highways. The term does not include fuel used for the propulsion or drawing of aircraft, railroad cars or railroad locomotives.
- (87) **“Special Sales Event”** means any sales event which includes more than three (3) Vendors taking place at a single location for a limited period of time not to exceed seven (7) consecutive days.
- (88) **“Storage”** means any keeping or retention of, or exercise dominion or control over, or possession of, for any length of time, tangible personal property not while in transit but on a stand still basis for future use when leased, rented or purchased at retail from sources either within or without the City from any person or vendor.
- (89) **“Student”** means any person enrolled in a school.
- (90) **“Tangible Personal Property”** means personal property that can be one or more of the following: seen, weighed, measured, felt, touched, stored, transported, exchanged, or that is in any other manner perceptible to the senses.
- (91) **“Tax”** means the use tax due from a consumer or the sales tax due from a retailer or the sum of both due from a retailer who also consumes.
- (92) **“Tax Deficiency” or “Deficiency”** means any amount of tax, penalty, interest, or other fee that is not reported and/or not paid on or before the date that any return or payment of the tax is required under the terms of this Code.
- (93) **“Taxable Sales”** means gross sales less any exemptions and deductions specified in this Code.
- (94) **“Taxable Services”** means services subject to tax pursuant to this Code.
- (95) **“Taxpayer”** means any person obligated to collect and/or pay tax under the terms of this Code.
- (96) **“Telecommunications Service”** means the service of which the object is the transmission of any two-way interactive electronic or electromagnetic communications including but not limited to voice, image, data and any other information, by the use of any means but not limited to wire, cable, fiber optical cable, microwave, radio wave, Voice over Internet Protocol (VoIP), or any combinations of such media, including any form of mobile two-

way communication.

**** Drafter's Note:** Municipalities may consider adding, “Telecommunications service” does not include separately stated non-transmission services which constitute computer processing applications used to act on the information to be transmitted’ to their exemption language.

- (97) **“Television & Entertainment Services”** means audio or visual content, that can be transmitted electronically by any means, for which a charge is imposed.
- (98) **“Therapeutic Device”** means devices, appliances, or related accessories that correct or treat a human physical disability or surgically created abnormality.
- (99) **“Toll Free Telecommunications Service”** means a Telecommunications Service that allows a caller to dial a number without incurring an additional charge for the call.
- (100) **“Total Tax Liability”** means the total of all tax, penalties and/or interest owed by a taxpayer and shall include sales tax collected in excess of such tax computed on total sales.
- (101) **“Transient / Temporary Sale”** means a sale by any person who engages in a temporary business of selling and delivering goods within the city for a period of no more than seven consecutive days.
- (102) **“Transient / Temporary Vendor”** means any person who engages in the business of Transient / Temporary Sales.
- (103) **“Use”** means the exercise, for any length of time by any person within the City of any right, power or dominion over tangible personal property or services when rented, leased or purchased at retail from sources either within or without the City from any person or vendor or used in the performance of a contract in the City whether such tangible personal property is owned or not owned by the taxpayer. Use also includes the withdrawal of items from inventory for consumption.
- (104) **“Use Tax”** means the tax paid or required to be paid by a consumer for using, storing, distributing or otherwise consuming tangible personal property or taxable services inside the City.
- (105) **“Wholesale Sales”** means a sale by wholesalers to retailers, jobbers, dealers, or other wholesalers for resale and does not include a sale by Wholesalers to users or consumers not for resale; latter types of sales shall be deemed to be Retail Sales and shall be subject to the provisions of this chapter.
- (106) **“Wholesaler”** means any person doing an organized wholesale or jobbing business and selling to Retailers, jobbers, dealers, or other Wholesalers, for the purpose of resale, and not for storage, use, consumption, or distribution.